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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/563,530

01/04/2006

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11/24/2008

EXAMINER

BLANKENSHIP, GREGORY A

ART UNIT

PAPER NUMBER

3612

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/563,530	<b>Applicant(s)</b> BURGESS ET AL.	
	<b>Examiner</b> GREGORY BLANKENSHIP	<b>Art Unit</b> 3612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on amendment filed 8/4/2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 January 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |



## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is not clearly understood because it requires frame members “along a side of the vehicle” and the seat “facing outwardly towards said side of the vehicle”. Figure 1 shows the frame is positioned in the lateral middle of the flat carrying area with some frame members extending along the rear side of the flat carrying area. However, the seats face a lateral side of the flat carrying area. The claim limitations appear to be misleading or incorrect. The examiner has read the limitation as the frame members extend along a side of the vehicle and the seat faces outwardly towards another side of the vehicle.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 5, 7, 8, 10, and 13-19 are rejected under 35 U.S.C. 102(b) as being anticipated by McGann, Jr. (3,469,355).

McGann, Jr. discloses a seating apparatus for use on a vehicle having a flat carrying area, such as a flat bed trailer as disclosed on lines 27-35 of column 2. The seating apparatus is

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formed of a frame (1) that is inherently capable of providing some degree of protection in a roll over event to a person seated on the seating apparatus. In reference to claims 1 and 5, four seats (2) are shown mounted in the frame in Figure 2. In reference to claims 1 and 7, bolts provide releasable securing means for securing the seating apparatus on the flat carrying area of the flat bed trailer such that the seating apparatus can be removed as desired, as disclosed on lines 27-35 of column 2. The frame (1) has frame members that extend upwardly from the vehicle along a rear side of the vehicle, as shown in Figure 2. The seats are positioned between the frame members and face outwardly towards a lateral side of the vehicle. The frame members provide side protection to the person in the seat if the vehicle should roll over onto its side. In reference to claim 2, the seats are demountable from the frame since the seats are attached to the frame by screws or bolts, as disclosed on lines 15-16 of column 2. In reference to claim 8, the bolts are considered quick release securing means because they can be quickly released. In reference to claim 10, the bolts form plugs and the bolt receiving elements form sockets of a quick release securing means. In reference to claim 13, the frame is of open tubular construction, as shown in Figures 1 and 2. In reference to claim 14, Figure 1 shows stowage space underneath each seat. In reference to claim 15, seat belts (6) can act as holder means to hold an object being carried by a person sitting in the seats. In reference to claim 16, seat belts (6) and hand rails (7) provide lateral restraint means for a person seated on the seat, as shown in Figure 1. It should be noted that reference number (7) appears to be pointed at a vertical post instead of the hand rails shown adjacent to each seat in Figure 2. In reference to claim 17, the upper portion of each seat (2) provides a head rest for people that are of a certain seated height. In reference to

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claim 18, the seating apparatus includes seat belts (6). In reference to claim 19, the seating apparatus is provided on a vehicle, as disclosed on lines 27-35 of column 2.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGann, Jr. (3,469,355) in view of Schuler et al. (5,564,315).

McGann, Jr. does not disclose spring bolts.

Schuler et al. teach the use of spring bolts (7) to mount a seat.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use spring bolts to mount the seats of McGann, Jr., as taught by Schuler et al., to enhance the connection between the seats and the frame.

7. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGann, Jr. (3,469,355) in view of Tidwell (5,516,179).

McGann, Jr. does not disclose the seats being foldable.

Tidwell teaches a seat that folds.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the seats of McGann, Jr. such that they can fold, as taught by Tidwell, to allow access to components located beneath the seat and improve ingress and egress to adjacent seats.

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8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGann,Jr. (3,469,355) in view of Tidwell (5,516,179).

McGann, Jr. does not disclose the ability to connect another frame.

Tidwell teaches the ability of the frame to connect to other frames, as disclosed on lines 20-27 of column 3.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the frame of McGann, Jr. such that it can connect to another frame, as taught by Tidwell, so that it one design/model can be used in different numbers to fit vehicles of different sizes.

9. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGann,Jr. (3,469,355) in view of Baston (4,362,220).

McGann, Jr. does not disclose the claimed type of securing means.

Baston teaches a seating apparatus/roll over protection frame (5,6,8) that has a quick release latch and shackle mechanism (9).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the latch and shackle mechanism of Baston for the securing means of McGann, Jr. to provide a securing means that may be more quickly actuated.

10. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McGann,Jr. (3,469,355) in view of Hermann et al. (6,631,958).

McGann, Jr. does not disclose the claimed type of securing means.

Hermann et al. teach the use of a hook (15) and socket (17) quick release securing means for a seat (3), as disclosed on lines 49-51 of column 3.

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the hook and socket quick release securing means of Hermann et al. for the securing means of McGann, Jr. to provide a securing means that is capable of being actuated with only one hand.

***Allowable Subject Matter***

11. Claim 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

12. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.



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Any inquiry concerning this communication or earlier communications from the examiner should be directed to GREGORY BLANKENSHIP whose telephone number is (571)272-6656.

The examiner can normally be reached on 7-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Dayoan can be reached on 571-272-6659. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Glenn Dayoan/  
Supervisory Patent Examiner, Art Unit  
3612

gab  
November 19, 2008